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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO/OAKLAND  
DIVISION

JANE ROE, an individual; MARY ROE,  
an individual; SUSAN ROE, an  
individual; JOHN ROE, an individual;  
BARBARA ROE, an individual;  
PHOENIX HOTEL SF, LLC, a  
California limited liability company;  
FUNKY FUN, LLC, a California limited  
liability company; and 2930 EL  
CAMINO, LLC, a California limited  
liability company,

Plaintiffs,

v.

CITY AND COUNTY OF SAN  
FRANCISCO, a California public entity,

Defendants.

Case No. 4:24-cv-01562-JST

**PLAINTIFFS' OPPOSITION TO  
DEFENDANT'S MOTION TO  
DISMISS**

**ASSIGNED FOR ALL PURPOSES  
TO THE HONORABLE DISTRICT  
JUDGE JON S. TIGAR,  
COURTROOM 6**

Action Filed: 03/14/2024  
Trial Date: Unassigned

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1 **I. INTRODUCTION**

2 Plaintiffs filed this action because defendant City and County of San Francisco  
3 (the "City") puts them in danger by treating their neighborhood as a containment  
4 zone for illegal narcotics activity. Today, the City actively herds fentanyl addicts to  
5 the Tenderloin, encourages them to stay on that neighborhood's sidewalks and  
6 streets, and actively supports them when they do. The City also treats plaintiffs and  
7 other people who live and commerce in the Tenderloin unequally. In an attempt to  
8 confine social ills to a neighborhood with a large population of minority and low  
9 income people, the City does not enforce the laws against drug dealing and usage,  
10 public intoxication, illegal vending, blocked sidewalks, and loitering in the  
11 Tenderloin. However, the City does enforce those laws in more affluent, less diverse  
12 parts of San Francisco.

13 The City's motion to dismiss does not challenge the plaintiffs' allegations that  
14 the current street conditions in the Tenderloin are dangerously horrific and much  
15 worse compared to other parts of San Francisco. The City instead contends that  
16 plaintiffs have no remedy under state or federal law. In doing so the City misstates  
17 plaintiffs' allegations and the law.

18 For example, the City does not cite an unfavorable decision from the Eastern  
19 District that is nearly perfectly on point and supportive with respect to the disability  
20 claims made by two of the plaintiffs in this case.

21 Similarly, the City argues that all plaintiffs lack standing to bring their  
22 federal constitutional claims because they are solely premised on the City's failure to  
23 enforce laws and perform affirmative acts, which is patently inaccurate. The  
24 complaint makes specific allegations about the affirmative steps that the City has  
25 taken and continues to take that have caused or contributed to endangering  
26 plaintiffs' safety, health and lives.

27 Similarly, the City argues that some of plaintiffs' claims may be time-barred  
28 because the complaint does not tie specific dates to each allegation. The City also

1 asserts that *expired* emergency declarations *may* immunize it from tort liability.  
 2 These arguments ignore plaintiffs' explicit statement that they do not seek to recover  
 3 money damages, but instead limit their remedy to injunctive and equitable relief to  
 4 redress the *current conditions* around their homes and businesses.

## 5 **II. STANDARD OF REVIEW**

6 A party may move to dismiss for "failure to state a claim upon which relief can  
 7 be granted." Fed. R. Civ. P. 12(b)(6). In response, the court begins by assuming the  
 8 complaint's factual allegations are true, but not its legal conclusions. *Ashcroft v.*  
 9 *Iqbal*, 556 U.S. 662, 678–79 (2009) citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,  
 10 555 (2007). The court then determines whether those factual allegations, assumed  
 11 true, "plausibly give rise to an entitlement to relief" under Rule 8. *Id.* at 679. The  
 12 complaint need contain only a "short and plain statement of the claim showing that  
 13 the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2), not "detailed factual  
 14 allegations," *Bell Atl. Corp.*, 550 U.S. at 555. This evaluation of plausibility is a  
 15 context-specific task drawing on "judicial experience and common sense." *Id.* These  
 16 general rules apply to a defendant's argument that the court lacks jurisdiction to  
 17 hear a case. *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (holding courts  
 18 should resolve facial attacks on jurisdiction just as they would resolve motions to  
 19 dismiss under Rule 12(b)(6)).

## 20 **III. PLAINTIFFS' ALLEGATIONS**

### 21 **A. The City herds addicts to the Tenderloin and actively supports** 22 **them when they live on that neighborhood's streets.**

23 Plaintiffs allege that for years "the *de facto* policy of the City has been to corral  
 24 and confine illegal drug dealing and usage, and the associated injurious behaviors, to  
 25 the Tenderloin. The City tries to keep such crimes and nuisances out of other San  
 26 Francisco neighborhoods by 'containing' them in the Tenderloin." ECF no. 1 at ¶6.

27 Most recently, the City herds and directs fentanyl addicts to the Tenderloin,  
 28 where they can openly buy and use that drug and remain under its influence while

1 on that neighborhood's sidewalks and public spaces. *Id.* at ¶8.

2       Once in the Tenderloin, addicts quickly learn that the City and others will  
3 provide "support" if they stay in the neighborhood. For example, drug kits will be  
4 delivered to their sidewalk encampments. *Id.* at ¶10. These allegations are  
5 corroborated by the declarations that the City recently filed in the related case,  
6 *College of the Law, San Francisco, et al. v. CCSF*, Case No. 4:20-cv-03033-JST. The  
7 "Street Medicine team" provides "street-based" services to the homeless "who are  
8 currently rejecting shelter." ECF no. 137-9 at ¶¶6-12. The "Best Neighborhood  
9 Program" offers "street-based care" and distributes thousands of kits, outreach  
10 supplies, and Narcan doses in the Tenderloin. ECF no. 137-10 at ¶¶4-8. The "Night  
11 Navigator" program provides "on the spot" services and resources to the homeless,  
12 and this includes kits, supplies and Narcan doses. ECF no. 137-6 at ¶¶4-9. The "Joint  
13 Field Operations" supports individuals "experiencing homelessness or struggling  
14 with substance use disorders." ECF no. 137-8 at ¶8.<sup>1</sup>

15       An organization in the Tenderloin regularly hands out fentanyl smoking kits.  
16 Crowds gather for these handouts and chaos ensues; addicts become intoxicated and  
17 act erratically. When citizens try to discourage people from using narcotics on the  
18 sidewalk, the organization intercedes, proclaiming the addicts have the right to use  
19 drugs in public spaces. The City knows this organization and other groups hand out  
20 fentanyl kits and encourage illegal drug use in the Tenderloin.<sup>2</sup> ECF no. 1 at ¶45.

21       The City opened a "wellness hub" in the Tenderloin that, in fact, operated as a  
22 narcotics consumption site, in violation of state and federal criminal laws. *Id.* at ¶79.<sup>3</sup>

23  
24 <sup>1</sup> Plaintiffs request judicial notice of these declarations. *See* FRE 201(b)(2) and 801(d)(2).

25 <sup>2</sup> Plaintiffs can add specific allegations that the City directly and indirectly distributes drug  
26 paraphernalia to addicts living on the Tenderloin's streets, a crime under state law. *See* Cal.  
27 Health & Safety Code § 11364.5

28 <sup>3</sup> Plaintiffs can add allegations that SFPD dropped addicts off at the "Tenderloin Linkage  
Center," and that the center's operations, that the operation of other City-supported "service  
centers" in the Tenderloin, and that other City policies draws numerous addicts and dealers  
from outside of San Francisco to the Tenderloin. *See*  
<https://www.sfchronicle.com/crime/article/san-francisco-cash-aid-drug-users-18695571.php>

1 Similarly, last summer, "activists" set up tents on a Tenderloin street and invited  
 2 addicts to come there to collect drug paraphernalia and ingest fentanyl, also in  
 3 violation of criminal laws. A member of the City's board of supervisors praised those  
 4 who ran the site. An employee of a nonprofit that receives many millions in City  
 5 funding appears to have been involved in its operation. *Id.* at ¶¶75-79.<sup>4</sup>

6 **B. The City treats plaintiffs unequally by *not* enforcing laws in the**  
 7 **Tenderloin that it enforces in other neighborhoods.**

8 Plaintiffs allege that pursuant to the containment zone policy City, the treats  
 9 them and other residents and businesses in the Tenderloin unequally. ECF no. 1 at  
 10 ¶17. For example, the City recently decided to enforce the laws that prohibit illegal  
 11 street vending in the Mission District. The City has not done the same in the  
 12 Tenderloin. Foreseeably, illegal street vending increased in the "containment zone,"  
 13 also known as the Tenderloin, after the City's crackdown in the Mission. *Id.* at ¶34.

14 The City knows that groups hand out fentanyl kits and encourage illegal drug  
 15 use in the Tenderloin. "The City would not tolerate such arrogant and reckless  
 16 conduct in other neighborhoods, but because the City has decided to treat the  
 17 Tenderloin as a containment zone, it does nothing to discourage such activity despite  
 18 the harm it causes to Tenderloin residents and stakeholders." *Id.* at ¶45.

19 The City knows crowds gather in front of small markets in the Tenderloin,  
 20 completely blocking the sidewalks while selling, buying and using drugs, and  
 21 hawking stolen items. The City would not tolerate such nuisances around markets  
 22 elsewhere, but because the City treats the Tenderloin as a containment zone, the

23 \_\_\_\_\_  
 24 <sup>4</sup> Plaintiffs can allege more detail as to how the City actively encourages addicts to come to  
 25 and stay in the Tenderloin, and how it treats the neighborhood unequally. For example, in  
 26 recent years the City and City-funded organizations, with no advance publicity or local input,  
 27 have opened numerous "wellness," "service" and "support" centers in the neighborhood under  
 28 the guise of compassion for substance abusers. These centers foreseeably attract more  
 addicts (and the drug dealers who follow them) to the Tenderloin, and add to the already  
 dangerous environment. By contrast, earlier this year the City *publicly* announced a plan to  
 open a "sober housing" project near Chinatown, but quickly scrapped that plan in the face of  
 stiff public opposition. See <https://www.sfchronicle.com/bayarea/article/sf-breed-drug-crisis-chinatown-sober-living-18678670.php> .

1 City does little to nothing in response. *Id.* at ¶¶16, 46, 56-57.

2 **C. The City's affirmative conduct puts plaintiffs in danger and**  
 3 **exposes them to nuisances.**

4 The complaint alleges how the City's affirmative conduct of steering addicts to  
 5 the Tenderloin and encouraging them to live on its streets, and the City's selective  
 6 nonenforcement of the drug and other criminal laws in that neighborhood, puts  
 7 plaintiffs' in danger and exposes them to nuisances.

8 Addicts living on the Tenderloin's streets foreseeably support their habit by  
 9 stealing and hawking stolen merchandise on the sidewalks. As their addiction  
 10 worsens, they act erratically, ignore serious medical problems, rummage through  
 11 trash and discard it on the sidewalk, go partially clothed, and defecate in public.  
 12 Fentanyl dealers belong to competing gangs, and use intimidation, threats and  
 13 violence to protect their markets. Throngs gather on the sidewalks to sell, buy, and  
 14 use illegal narcotics, fight, commit thefts, and hawk stolen goods. There have been  
 15 drug-related murders, stabbings and gun battles. ECF no. 1 at ¶¶11-13, 16, 18, 19.

16 Plaintiff Jane Roe lives with her husband and their two young daughters in an  
 17 apartment in the center of the Tenderloin. Open-air drug deals occur on the sidewalk  
 18 in front of their building. When she and her family enter or leave their home, they  
 19 encounter drug dealers, users who openly inject or smoke narcotics, and people who  
 20 appear unconscious or dead. On one occasion, a person in front of her building  
 21 threatened to cut her throat. On other occasions, people threatened her with knives  
 22 and hammers. People start smokey bonfires in front of the building that endanger  
 23 the health of her asthmatic daughter. Encampments block the sidewalks around her  
 24 apartment. Unleashed dogs associated with encampments bark and growl when she  
 25 and her family pass. Displays of stolen goods for sale also block the sidewalk. Trash  
 26 and biohazards, such as used syringes and feces, litter the area. She and her family  
 27 must step into the busy street to bypass these hazards, dangers and obstacles. ECF  
 28 no. 1 at ¶¶25-36; *see also* ECF no. 19-2 (Jane Roe Declaration).

1 Large crowds block the sidewalks around plaintiff Susan Roe's home. People in  
2 these crowds openly smoke and inject drugs, scream and act erratically. She must be  
3 on the lookout for and navigate around excrement, used syringes, vomit and garbage.  
4 These obstacles make it impossible for her to use the sidewalk. She instead walks in  
5 the busy street. ECF no. 1 at ¶¶37-40; *see also* ECF no. 19-4 (Susan Roe Declaration).

6 Drug dealers and users block the sidewalks around plaintiff Mary Roe's  
7 apartment building. She must avoid people who scream and act erratically, or who  
8 are naked. The sidewalks around her home are littered with garbage, human waste,  
9 and used drug paraphernalia. She has no choice but to jaywalk in a busy street. ECF  
10 no. 1 at ¶¶41-44; *see also* ECF no. 19-3 (Mary Roe Declaration).

11 Plaintiff John Roe and his husband own a home in the Tenderloin. Drug deals  
12 happen around his residence at all hours. The dealers belong to intimidating gangs.  
13 People inject drugs and light fires in front of his home. He hears people screaming in  
14 the throes of psychotic episodes. He hears gunshots. Encampments and displays of  
15 stolen goods for sale make the sidewalks impassable. He must step into the street to  
16 bypass these dangers and obstacles. ECF no. 1 at ¶¶47-52; *see also* ECF no. 19-5  
17 (John Roe Declaration).

18 Plaintiff Barbara Roe and her husband own a Tenderloin condominium. Large  
19 crowds gather in front of and around her building every night, and its members  
20 openly sell and use drugs, and hawk stolen items. She finds it "difficult and scary" to  
21 navigate through the crowds around her residence. They light bonfires that trigger  
22 the building's smoke alarm. People under the influence block the door to her building  
23 and she fears that they will attack her when she tries to pass. Recently, her neighbor  
24 was attacked and injured at the building's entrance and received stitches. She must  
25 step into the busy street to bypass the sidewalk obstacles near her home. ECF no. 1  
26 at ¶¶53-57; *see also* ECF no. 19-6 (Barbara Roe Declaration).

27 Gang members now openly sell fentanyl and other potent drugs around the  
28 Phoenix Hotel. People freely inject and smoke and ingest drugs on the sidewalks

1 around the property. The conditions around the hotel scare away prospective guests  
 2 and restaurant patrons. A trespasser recently hit a hotel employee in the head with  
 3 an object. ECF no. 1 at ¶¶58-70.

4 Narcotic transactions happen around the Best Western hotel at all hours.  
 5 Addicts live in unsanitary sidewalk encampments next to the property. The  
 6 conditions around the hotel mortify and scare away guests. ECF no. 1 at ¶¶71-74.

7 **D. The disabled plaintiffs are unable to use the sidewalks, public**  
 8 **spaces and programs around their homes.**

9 Susan Roe is elderly and depends on a walker to ambulate. As described above,  
 10 the sidewalks and public spaces around her home are impassable and inaccessible to  
 11 her because they are obstructed by crowds, encampments and items. She attends  
 12 community events and receives services at a nearby senior center. These events and  
 13 services are important to her, but she dreads going to the center because  
 14 intimidating crowds block a corner where she must cross the street. These obstacles  
 15 force her to walk in the busy street. *Id.* at ¶¶38-40.

16 Mary Roe is a senior citizen whose spinal and lung infirmities make it difficult  
 17 for her to walk. As described above, drug dealers and users, encampments, illegal  
 18 street vendors and similar obstructions block the sidewalks around her residence.  
 19 When she ventures outside, she has no choice but to jaywalk. Around the corner from  
 20 her apartment crowds of drug dealers and users block the sidewalks in front of small  
 21 markets. *Id.* at ¶¶42, 43, 46.

22 The Phoenix Hotel and Best Western plaintiffs are not parties to the disability  
 23 claims made in the complaint. However, the ADA and other laws that mandate that  
 24 their facilities be open and accessible to those with disabilities, *e.g.*, patrons who use  
 25 a wheelchair. People selling and using narcotics block passage of the sidewalks  
 26 abutting these businesses. Encampments, garbage and biological hazards make it  
 27 difficult or impossible for even able-bodied guests and patrons to navigate on the  
 28 public walkways around the businesses. The sidewalks around the hotels are

1 inaccessible to their disabled guests and patrons. *Id.* at ¶¶67, 73.

## 2 IV. ARGUMENT

### 3 A. Plaintiffs Mary and Susan Roe have standing to bring their 4 properly alleged disability claims.

5 The first three claims are brought by plaintiffs Mary Roe and Susan Roe only.  
6 The first cause of action alleges violations of the Americans with Disabilities Act  
7 ("ADA"), the second alleges violations of Section 504, and the third alleges violations  
8 of the California Disabled Persons Act ("DPA"). ECF no. 1 at ¶¶81-96.

9 The City claims that the allegations are vague and as such, the plaintiffs have  
10 failed to adequately allege Article III standing as to the first two causes of action.  
11 The City also argues the allegations are "insufficient" to state claims under all three  
12 causes of action. ECF no. 35 at pp. 14-16, 18. But a review of fundamental principles  
13 related to these access laws and court decisions springing from those principles  
14 proves otherwise.

15 As a threshold matter, Title II, the "public services" provision of the ADA,  
16 prohibits discrimination by public entities. *See* Americans with Disabilities Act of  
17 1990 § 201-04, 42 U.S.C. § 12131-34 (2006). Moreover, Section 504 provides  
18 equivalent coverage. *See Bragdon v. Abbott*, 524 U.S. 624, 631-32 (1998) (stating that  
19 § 12201(a) "requires [the Court] to construe the ADA to grant at least as much  
20 protection as provided by the regulations implementing the Rehabilitation Act").

21 To comply with the ADA, public entities must operate such that each program,  
22 service, or activity, when viewed in its entirety, is accessible to individuals with  
23 disabilities. The federal regulations state that "[e]xcept as otherwise provided ... no  
24 qualified individual with a disability shall, because a public entity's facilities are  
25 inaccessible to or unusable by individuals with disabilities, be excluded from  
26 participation in, or be denied the benefits of the services, programs, or activities of a  
27 public entity ...." 28 C.F.R. § 35.149. A "facility" is defined as "all or any portion of  
28 buildings, structures, sites, complexes, equipment, rolling stock or other conveyances,

1 roads, walks, passageways, parking lots, or other real or personal property, including  
 2 the site where the building, property, structure, or equipment is located." 28 C.F.R. §  
 3 35.104 (emphasis added).

4 Although new construction is subject to different compliance standards than  
 5 "existing facilities," the "program access" standard associated with existing facilities  
 6 was not intended to serve as a sword and a shield that allows public entities to avoid  
 7 making facilities accessible and also attack challenges designed to do the same. *See*  
 8 <https://www.ada.gov/law-and-regs/design-standards/> ("State and local governments  
 9 are required by Title II to provide program access. The program access requirement  
 10 makes sure that individuals with disabilities are not excluded from any program,  
 11 service, or activity provided by the state or local government because existing  
 12 buildings and facilities are inaccessible. State and local governments must look at  
 13 their programs, services and activities in their entirety or as a whole to ensure that  
 14 they are accessible to individuals with disabilities.").

15 The Ninth Circuit has concluded that the ADA's "fundamental purpose" of  
 16 eliminating disability discrimination is best served by including public sidewalks  
 17 within the phrase "services, programs, or activities." *Barden v. City of Sacramento*,  
 18 292 F.3d 1073, 1077 (9th Cir. 2002) (citing *Hason v. Med. Bd.*, 279 F.3d 1167, 1172  
 19 (9th Cir. 2002)). *Barden* involved a group of individuals with mobility and vision  
 20 impairments who brought a class action against Sacramento, alleging that the city  
 21 had violated Title II and Section 504 by failing to maintain existing public sidewalks  
 22 and to make them accessible to persons with disabilities. *See id.* at 1075.

23 In *Barden*, the Ninth Circuit reasoned that the proper question was not  
 24 whether a public function could technically be considered a service, program, or  
 25 activity, but rather concluded that maintaining a system of public sidewalks is  
 26 "without a doubt something that the [city] 'does,' " and therefore falls under the  
 27 purview of Title II. *Id.* at 1076-1077 (quoting *Hason*, 279 F.3d at 1173).

28 That federal courts, in entirely different circumstances, have generally

1 approved San Francisco's program access approach to sidewalks in no way insulates  
 2 the City from its refusal to maintain its facilities nor justifies its blatant and ongoing  
 3 violations of the ADA in plaintiffs' neighborhood.

4 It is within this context that the City's reliance on *Whitaker v. Tesla Motors, Inc.*  
 5 985 F.3d 1173 (9th Cir. 2021) must be viewed. There, Whitaker, a  
 6 wheelchair-bound quadriplegic, visited a Tesla dealership in Sherman Oaks and  
 7 allegedly encountered inaccessible service counters that denied him full and equal  
 8 access to the dealership and "created difficulty and discomfort." *Id.* at 1175. He  
 9 further alleged that Tesla's continued failure to provide accessible service counters  
 10 deterred him from returning to the dealership. *Id.* He alleged "on information and  
 11 belief, that there are other violations and barriers on the site that relate to his  
 12 disability." *Id.* The court considered those allegations to be vague and uncertain and  
 13 invited him to amend. *Id.* The court did not describe an onerous or technical pleading  
 14 standard; it observed that the necessary detail could have been shown through  
 15 allegations that "the counter was too high" or "not in a place that had wheelchair  
 16 access." *Id.* For unknown reasons, he failed to do so.

17 That is a far cry from the detailed allegations in this case, where Susan and  
 18 Mary Roe list specific streets they cannot access, describe in graphic detail the  
 19 obstacles they encounter and the specific impact the barriers to movement have on  
 20 them in simply venturing out of their residences. ECF no. 1 at ¶¶32, 37-40, 42-46.  
 21 The complaint is also replete with images of Tenderloin sidewalk conditions.  
 22 Moreover, Mary and Susan Roe, unlike Whitaker, are not serial complainants suing  
 23 for money damages against private entities. These plaintiffs want no money, but  
 24 rather freedom to move with dignity on the sidewalks near their homes so as to gain  
 25 access to San Francisco services.

26 The City also relies on *Chapman v. Pier 1 Imports (U.S.) Inc.* 631 F.3d 939 (9th  
 27 Cir. 2011) (en banc) for the proposition that plaintiffs' allegations are constitutionally  
 28 infirm. In *Chapman*, the complainant required the use of a motorized wheelchair

1 when traveling in public. In July 2004, he sued a Pier 1 Imports alleging that some of  
2 the chain's Vacaville store's architectural features denied him full and equal  
3 enjoyment of the premises in violation of the ADA. *Id.* Chapman requested, among  
4 other things, monetary damages. *Id.* During discovery, Chapman testified that he  
5 was not deterred by the alleged ADA violations; rather, Chapman acknowledged that  
6 he intended to return to the store, which was located near his home and offers  
7 products he finds desirable. *Id.* Again, that factual scenario bears no resemblance to  
8 the present case, where plaintiffs cannot even access stores and public services, much  
9 less freely return to them. ECF no. 1 ¶¶39, 40, 43-44, 82, 87-88, 92.

10 More importantly, *Chapman*, like *Whitaker*, involved Title III of the ADA  
11 related to public accommodations in private facilities. *See Chapman*, 631 F.3d at 944-  
12 945; *see also Whitaker*, 985 F.3d at 1174-1175. As set forth above, Congress created a  
13 whole separate section, Title II of the ADA, because of the larger, more critical  
14 obligation a local government has to provide safe access. *Barden*, 292 F.3d at 1077.  
15 Again, a picture is worth a thousand words here, as no such access exists for these  
16 plaintiffs.

17 Plaintiffs Mary and Susan Roe's disability claims are akin to those made in  
18 *Hood v. City of Sacramento*, 2023 WL 6541870 (E.D. Cal. 2023), which is nearly  
19 perfectly on point, and which the City conspicuously fails to cite, let alone discuss.

20 In *Hood*, five disabled plaintiffs brought a putative class action pursuant to the  
21 ADA and Section 504 to enjoin Sacramento City and Sacramento County based on  
22 their alleged failure to maintain their sidewalks clear of debris and tent  
23 encampments. Both the city and the county moved to dismiss, arguing, as does the  
24 City here, that plaintiffs lacked Article III standing and had failed to state claims. *Id.*  
25 at \*1.

26 As to standing, the *Hood* court found that two of the plaintiffs had properly  
27  
28

1 alleged an injury based on the encampments and barriers on the sidewalks.<sup>5</sup> *Id.* at  
 2 \*3. As to causation, the court held "plaintiffs allege unhoused individuals make  
 3 decisions to set up and remain housed in sidewalk encampments only because the  
 4 city permits them to do so.... It is these encampments that cause plaintiffs' alleged  
 5 injuries. As alleged, the court finds a causal chain between defendants' actions and  
 6 plaintiffs' injuries." *Id.* The court also found that the plaintiffs' claims were  
 7 redressable because the injunction requested need not violate the rights of the  
 8 unhoused, and the court could adopt an injunction that was not unduly burdensome.  
 9 "If plaintiffs prevail, the court need not issue their requested injunction and can  
 10 instead fashion an injunction with language taking account of defendant's concerns."  
 11 *Id.* at \*4.

12 The *Hood* defendants argued plaintiffs' claims failed because 1) they did not  
 13 allege they were denied access to defendants' sidewalk systems in their entirety, and  
 14 2) plaintiffs could not establish they were denied access to sidewalks solely by reason  
 15 of their disabilities. *Id.* The court rejected both arguments. As to "systems," the court  
 16 held:

17 Construing the factual allegations in the light most  
 18 favorable to them, all plaintiffs but Barstow have plausibly  
 19 alleged defendants' sidewalks are systematically  
 20 unavailable to them because they cannot access specific  
 21 destinations within the City and/or County. Although Hood  
 22 alleges she has had difficulty navigating City sidewalks,  
 23 she has not alleged the sidewalks are unavailable to her.  
 24 .... The court grants the City's motion to dismiss and  
 25 dismisses Hood's and Barstow's claims against it with  
 26 leave to amend.

27 *Id.* at \*6.

28 With respect to the exclusion-based-on-disability requirement, the defendants  
 argued "the encampments and debris at issue 'affect[ ] the entire community at large'  
 so plaintiffs cannot allege any exclusion was by reason of their disabilities." *Id.* But

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<sup>5</sup> The court dismissed the claims of the other three plaintiffs with leave to amend.

1 the court found that plaintiffs had properly alleged a disparate impact claim.  
 2 "[P]laintiffs have alleged just that: The government's policy of allowing encampments  
 3 and debris on sidewalks has the effect of denying plaintiffs access to those sidewalks,  
 4 even though the policy applies to all individuals." *Id.*

5 For the same reasons as discussed in *Hood*, Mary and Susan Roe have  
 6 properly alleged both standing and ADA and Section 504 claims. As the City  
 7 acknowledges, the DPA not only "substantially overlaps with the ADA" but also  
 8 "provides additional protections beyond the ADA." ECF no. 35 at p. 18. Thus, their  
 9 DPA claim is also properly pleaded.

10 In sum, the disability claims' allegations are plainly sufficient. As alleged in  
 11 the complaint and supported by above-referenced case law, the City is not performing  
 12 its basic duty to make a sidewalk accessible, a transgression that limits Mary and  
 13 Susan Roe from accessing any public or private businesses or services.

14 **B. Plaintiffs adequately allege nuisance claims.**

15 All plaintiffs bring the fourth and fifth causes of action, which allege public  
 16 and private nuisance. ECF no. 1 at ¶¶97-107. These claims are adequately pled.

17 Nuisance actions can be brought against public entities "to the extent that  
 18 such actions are founded on Civil Code sections 3479, 3480 and 3481, which define  
 19 public and private nuisances." *Vedder v. Cnty. of Imperial*, 36 Cal. App. 3d 654, 661  
 20 (1974). Plaintiffs' allegations about how they are affected and harmed by conditions  
 21 adjacent to their homes and businesses, are all recognized by Civil Code § 3479,  
 22 which provides the general definition of what is a nuisances. That statute says:

23 Anything which is injurious to health, including, but not  
 24 limited to, the illegal sale of controlled substances, or is  
 25 indecent or offensive to the senses, or an obstruction to the  
 26 free use of property, so as to interfere with the comfortable  
 enjoyment of life or property, or unlawfully obstructs the  
 free passage or use, in the customary manner, of ... any  
 public park, square, street, or highway, is a nuisance.

27 Civil Code §3480 defines which nuisances are a "public nuisance" and  
 28 comports with plaintiffs' allegations about how the City's conduct affects their entire

1 neighborhood. It says, "A public nuisance is one which affects at the same time an  
 2 entire community or neighborhood, or any considerable number of persons, although  
 3 the extent of the annoyance or damage inflicted upon individuals may be unequal."  
 4 While Civil Code §3481 defines a private nuisance as being every type of a nuisance  
 5 that is not a public nuisance.

6 " 'A nuisance may be both public and private, but to proceed on a private  
 7 nuisance theory the plaintiff must prove an injury specifically referable to the use  
 8 and enjoyment of his or her land. The injury, however, need not be different in kind  
 9 from that suffered by the general public.' " *People v. ConAgra Grocery Prod. Co.*, 17  
 10 Cal. App. 5th 51, 122 (2017) quoting *Koll-Irvine Center Property Owners Assn. v.*  
 11 *County of Orange* (1994) 24 Cal.App.4th 1036, 1041.

12 A public nuisance cause of action is premised on affirmative conduct that  
 13 assisted in the creation of a hazardous condition. Affirmative conduct encompasses  
 14 any action that assists in creating a system that causes hazardous conditions. *City &*  
 15 *Cnty. of San Francisco v. Purdue Pharma L.P.*, 491 F. Supp. 3d 610, 674 (N.D. Cal.  
 16 2020) (San Francisco sufficiently pleaded that pharmaceutical companies and drug-  
 17 store chain engaged in affirmative conduct that enabled the opioid epidemic in the  
 18 city, as was relevant to determining if the city stated a public-nuisance claim under  
 19 California law as to their distribution of opioids).

20 For example, plaintiffs allege the City operated a narcotics consumption site in  
 21 the Tenderloin, a federal and state crime.<sup>6</sup> Likewise, they allege the City condoned  
 22 another illegal drug consumption site, countenances the distribution of drug  
 23 paraphernalia in the Tenderloin, and provides support to addicts who opt to live on  
 24 the Tenderloin's streets. ECF no. 1 ¶¶ 75-79. By doing so, the City sends the clear  
 25 message that addicts should come to Tenderloin (and the gang-member dealers

26  
 27 <sup>6</sup> Cal. Health & Safety Code §§ 11365, 11366; 21 U.S.C. § 856. "The statute forbids opening  
 28 and maintaining any place for visitors to come to use drugs." *United States v. Safehouse*, 985  
 F.3d 225, 243 (3rd Cir. 2021) (a nonprofit that intentionally opens its facility to visitors it  
 knows will use drugs there violates § 856).

1 predictably follow their customers). Plaintiffs are the ones who pay the price for these  
 2 City actions.

3 With respect to these allegations, *Lew v. Superior Court of Alameda County*,  
 4 20 Cal.App.4th 866, is both analogous and instructive. There, plaintiffs lived near a  
 5 multi-unit HUD insured apartment complex owned by defendants. Plaintiffs alleged  
 6 defendants allowed illegal drug activity to occur at the complex. Plaintiffs made  
 7 allegations similar to those made in this case. For example, "[n]umerous times I have  
 8 been confronted by dealers or buyers and I am now afraid to walk near this property  
 9 and down my street." *Id.* at 869. The trial court found that the complex was "being  
 10 used as a center for sale and distribution of drugs" and awarded the plaintiffs  
 11 damages. *Id.* at 870. Defendant brought a writ seeking to set aside the judgment,  
 12 arguing that they could not be held liable for the criminal acts of third parties. The  
 13 court of appeals denied the petition, holding:

14 The Legislature has resolved any doubt as to the question  
 15 of whether a so-called "drug house" is a nuisance through  
 16 the enactment of section 11570 of the Health and Safety  
 17 Code. That section, enacted in 1972, provides as follows:  
 18 "Every building or place used for the purpose of unlawfully  
 19 selling, serving, storing, keeping, manufacturing, or giving  
 20 away any controlled substance, precursor, or analog  
 21 specified in this division, and every building or place  
 22 wherein or upon which those acts take place, is a nuisance  
 23 which shall be enjoined, abated, and prevented, and for  
 24 which damages may be recovered, whether it is a public or  
 25 private nuisance."

.... The fact that the immediate and specific injury  
 plaintiffs suffered from this nuisance was due to the acts of  
 third parties, rather than, for example, being due to  
 noxious gases, is not relevant to the issue of whether the  
 property qualifies as a nuisance under section 11570. That  
 section does not require that the unlawful activity which  
 makes the building a nuisance be conducted by the owner  
 of the building, a tenant of the building, or a person  
 entering with permission.

26 *Id.* at 871 [footnote omitted].

27 Whether the City continues to operate an illegal consumption site in the  
 28 Tenderloin is immaterial to the viability of the nuisance claim because plaintiffs

1 allege that the aftereffects continue to harm them. It is not necessary for plaintiffs to  
2 show the City continues to assist in the creation of the public nuisance if its conduct  
3 was a substantial factor in causing the ongoing public nuisance. *People v. ConAgra*  
4 *Grocery Prod. Co.*, 17 Cal. App. 5th 51, 97 (2017) (lead paint manufacturer's  
5 advertising in the 1930-40's was evidence of assisting in creating the public nuisance  
6 of lead paint in residential homes built after 1950 even if it stopped producing  
7 lead paint in 1948).

8       The City's argument that plaintiffs fail to allege an injury that is "different in  
9 kind" from the general public lacks merit. There is no requirement that plaintiffs  
10 suffer damage different in kind when the nuisance is both private and public.  
11 Moreover, each plaintiff satisfies the special injury requirement if needed. Each  
12 makes specific allegations about how the harms that the City fostered in the  
13 Tenderloin affects them and their property.

14       The City's argument that the nuisance claims may be barred by the three-year  
15 limitations period because they have not alleged specific acts on specific dates is  
16 nonsensical. Plaintiffs disclaim an award of monetary compensation. Plaintiffs  
17 plainly allege that they seek injunctive relief only because the nuisances are  
18 continuous and ongoing. ECF No. 1 ¶¶ 36, 39-40, 44-46, 49, 55, 68-70, 72, 100-102,  
19 105-106.

20       In sum, the City's motion to dismiss should be denied as to the fourth and fifth  
21 causes of action.

### 22       **C. Discussion of the federal constitutional claims.**

23       All plaintiffs bring the sixth, seventh and eighth causes of action, which allege  
24 violations of their federal constitutional rights. The sixth and eighth causes of action  
25 both reference violations of their due process rights, with the eighth cause of action  
26 expressly alleging that the City "affirmatively created or increased the risk that  
27  
28

plaintiffs would be exposed to dangerous conditions."<sup>7</sup> The seventh claim alleges equal protection violations. ECF no. 1 at ¶¶108-118.

**1. Plaintiffs have Article III standing.**

The City contends that plaintiffs' three federal constitutional claims are "predicated on the City's failure to enforce laws in the Tenderloin" and then argues that individuals lack standing to sue the government for failure to enforce the laws. ECF no. 35 at pp. 5-6. This is strawman argument. Plaintiffs' claims are based not solely on the City's non-enforcement of laws in the Tenderloin, but also the City's substantial and affirmative conduct in making the conditions there more harmful and dangerous to the plaintiffs.

**2. Plaintiffs have stated a substantive due process claim based on the danger-creation doctrine.**

In *DeShaney v. Winnebago County Dep't of Soc. Serv.*, 489 U.S. 189, 195 (1989) the Supreme Court held that a government is not obligated under the due process clause to "protect the life, liberty, and property of its citizens against invasion by private actors." An exception to the rule exists, however, where the state actor affirmatively places the plaintiff in a dangerous situation. The affirmative act must create an actual, particularized danger, and the ultimate injury to the plaintiffs must be foreseeable. *Hernandez v. City of San Jose*, 897 F.3d 1125, 1133 (9th Cir. 2018) (attendees of political rally alleged police officers violated their due process rights under state-created danger theory by shepherding them into crowd of violent protesters).

Here, plaintiffs allege that the City's affirmative actions with respect to the containment zone policy exposes them to actual dangers and harms. Their allegations resemble those made in *Hunters Capital LLC v. City of Seattle*, 499 F.Supp.3d 888 (W.D. Wash. 2020) where business owners in protest-occupied area of city known as

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<sup>7</sup> The 6<sup>th</sup> and 7<sup>th</sup> causes of action cite both the 5<sup>th</sup> and the 14<sup>th</sup> Amendments. Plaintiffs agree they can only proceed against the City based on the 14<sup>th</sup> Amendment.

1 "CHOP" brought a putative class action against the City of Seattle, asserting claims  
 2 for substantive due process and other constitutional violations. Similar to this case,  
 3 the *Hunters Capital* plaintiffs alleged that CHOP participants set up tents on the  
 4 streets and sidewalks, and that Seattle provided them "with medical equipment,  
 5 washing/sanitation facilities, portable toilets, nighttime lighting, and other material  
 6 support," that the CHOP participants were violent, created excessive noise at all  
 7 hours, and that "trash, feces, and other refuse built up." *Id.* at 894. Plaintiffs alleged  
 8 that Seattle officials allowed the CHOP participants to continue occupying and  
 9 controlling access to the public areas and provided them concrete barriers to do so.  
 10 Plaintiffs alleged that as a result, "local residents could not use public streets,  
 11 sidewalks, or other rights-of-way to enter their homes or businesses, they could not  
 12 receive deliveries, and their clients were unable to visit their businesses." *Id.* at 895.  
 13 They also alleged that Seattle stopped providing most police services to the CHOP  
 14 area. *Id.* Seattle police cleared the area. Plaintiffs then filed suit seeking money  
 15 damages, alleging that their property and premises had been destroyed, stolen or  
 16 vandalized, that their revenues and rents had declined, that their clients had been  
 17 threatened, harassed and terrorized and had stopped patronizing their businesses,  
 18 and that the police did not respond to their emergency calls for assistance. *Id.* at 897-  
 19 898. Seattle moved to dismiss. With respect to the plaintiff's substantive due process  
 20 claim, the district court observed:

21 [T]he Ninth Circuit has held that a local government may  
 22 violate substantive due process if it " 'affirmatively places  
 23 [a plaintiff] ... in danger by acting with 'deliberate  
 24 indifference' to a 'known or obvious danger.' " *Martinez v.*  
 25 *City of Clovis*, 943 F.3d 1260, 1271 (9th Cir. 2019) (quoting  
 26 *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 971–72 (9th Cir.  
 27 2011)). To prevail on such a theory, known as the "state-  
 created danger doctrine," a plaintiff must show that (1)  
 "the officers' affirmative actions created or exposed her to  
 an actual, particularized danger that she would not  
 otherwise have faced," (2) "the injury ... suffered was  
 foreseeable," and (3) "the officers were deliberately  
 indifferent to the known danger." *Id.*

28 *Hunters Capital*, *supra*, 499 F.Supp.3d at 901–902.

1 The court held the plaintiffs' due process claim could go forward because the  
 2 complaint plausibly alleged that "the City's actions foreseeably placed Plaintiffs in a  
 3 worse position than they would have been in absent any City intervention  
 4 whatsoever. Their allegations are also sufficient to show that the City acted with  
 5 deliberate indifference to that danger." *Id.* at 902 (footnote omitted). As a case on  
 6 which the City and County of San Francisco relies heavily noted, "the plaintiffs'  
 7 claims in *Hunters Capital* were based not only on the city's alleged non-enforcement  
 8 of the laws, but also on the city's substantial, affirmative provision of material  
 9 support to the occupying protestors." *Railroad 1900, LLC v. City of Sacramento*, 604  
 10 F.Supp.3d 968, 974 (2022).

11 Here, plaintiffs likewise allege that the City's actions in the Tenderloin—e.g.,  
 12 operating drug consumption sites, distributing drug paraphernalia, providing  
 13 services to addicts who live on streets, ceasing to enforce laws—foreseeably places  
 14 them in a worse position. The allegations are more than sufficient to show that the  
 15 City acted, and continues to act, with deliberate indifference to these dangers.

16 Plaintiffs here do differ from those in *Hunters Capital* in two meaningful ways.  
 17 First, five of them are individuals, not businesses. Thus, the dangers and harms they  
 18 face in the Tenderloin are corporeal; threats to their life and limb.

19 Second, plaintiffs seek injunctive relief only, thus a lower threshold should  
 20 govern. In *LaShawn A. v. Dixon*, 762 F. Supp. 959, 996 (D.D.C. 1991), (aff'd and  
 21 remanded sub nom *LaShawn A. by Moore v. Kelly*, 990 F.2d 1319 (D.C. Cir. 1993), a  
 22 §1983 class action brought on behalf of foster children alleged that the government  
 23 agency managing the foster program violated numerous laws. Plaintiffs sought  
 24 injunctive relief only. Following a bench trial, the court issued an opinion stating  
 25 that it was judging the defendants' liability based on whether they exercised  
 26 competent professional judgment in the administration of the child welfare system.  
 27 In a footnote, the court explained why:

28 The Court is also persuaded to reach this conclusion based

on the nature of this case. This is not a case . . . in which the plaintiff seeks money damages. In such cases, a deliberate indifference standard may be warranted due to the chilling effect that an unfavorable judgment may have on municipal policymakers. Plaintiffs in this case seek injunctive relief only. In seeking such specific relief, it is particularly appropriate to consider whether the treatment plaintiffs are currently receiving is the result of competent, professional decisionmaking.

*Id.* at 996 fn. 29; *see also K.H. Through Murphy v. Morgan*, 914 F.2d 846, 854 (7th Cir. 1990) (Judge Richard Posner in *dicta* noting there might be broader liability in an injunctive suit against government officials).

### 3. Plaintiffs have stated an equal protection claim.

The City argues that equal protection claims "may *only* proceed where a plaintiff establishes a law was enforced against the plaintiff, but not against other similarly situated individuals...." ECF no. 35 at p. 8 (citing *Lacey v. Maricopa Cty.*, 693 F.3d 896, 922 (9th Cir.2012); *Rosenbaum v. City & Cnty. of San Francisco*, 484 F.3d 1142, 1152 (9th Cir. 2007) (emphasis added)). The case law does not support this assertion.

It may be true that courts have held that "[t]o prevail on an equal protection claim under the "Fourteenth Amendment, a plaintiff must demonstrate that enforcement had a discriminatory effect and the police were motivated by a discriminatory purpose." *Lacey*, 693 F.3d at 920 (citations omitted). However, this statement attends actions involving claims of selective enforcement. It does not follow that selective non-enforcement can never establish an equal protection claim. The selective non-enforcement argument was raised and rejected in *R.R. 1900, LLC v. City of Sacramento*, 604 F. Supp. 3d 968, 978 (E.D. Cal. 2022), in which the court relying on the *Lacey* line of precedent, commented as follows:

Nor has plaintiff identified any authority establishing that cities are required, as a matter of equal protection law, to treat all areas of the city alike. While it may be unfair for a city to afford businesses and residents in certain areas the benefit of enforcing local laws while denying that benefit to those in other areas, as plaintiff argues, it does not amount to a violation of equal protection. The court is aware of, and

1 plaintiff has identified, no precedent demonstrating that it  
 2 does, and to hold otherwise would expand the scope of the  
 3 Equal Protection Clause in ways this court lacks the  
 authority to extend it. Accordingly, plaintiff's equal  
 protection claim must also be dismissed.

4 However, this is *ipse dixit*. While direct authority might not exist that  
 5 supported the plaintiffs' claims in that case, the court cited no contrary authority  
 6 either.

7 Moreover, several key factors distinguish this case from the *R.R. 1900, LLC*  
 8 decision. As discussed above, the situation in the Tenderloin is a function of systemic  
 9 and affirmative decisions by the City. This is relevant not only in a due process  
 10 analysis, but also in the context of equal protection. Specifically, a key component of  
 11 the selective enforcement caselaw is the need for affirmative action on the part of  
 12 defendants. The Constitution is almost exclusively a negative on state power and  
 13 does not ordinarily provide for affirmative rights. However, when the conditions  
 14 complained of are a product of systematic decisions by state actors, which are then  
 15 left unremedied by selective nonenforcement, this state action requirement should be  
 16 satisfied.

#### 17 **4. Plaintiffs' allegations satisfy *Monell*.**

18 Plaintiffs allege that they have been harmed by the execution of City policies.  
 19 As part of the containment zone policy, the City itself operated the drug consumption  
 20 site that brought even more addicts and dealers to the Tenderloin. As the City  
 21 declarations submitted in the related case show, the City actively provides support  
 22 and services to addicts who live on the streets and refuse offers of shelter. Plaintiffs  
 23 describe the harms that befall them because of the numerous drug fentanyl addicts  
 24 on the streets and sidewalks around their homes and businesses. Plaintiffs can  
 25 amend their complaint to add other acts of the City that show it treats the  
 26 Tenderloin as a containment zone, to the injury of the plaintiffs, such as its direct  
 27 and indirect involvement in distributing drug paraphernalia.

28 Accordingly, the Court should deny the City's motion to dismiss the federal

1 constitutional claims.

2 **D. Plaintiffs' negligence claim can proceed because they seek**  
 3 **equitable relief only.**

4 The City argues that it is immune from plaintiffs' ninth cause of action for  
 5 negligence (ECF no. 1 at ¶¶119-123), and cite to Government Code §815 *et seq.*  
 6 However, the City ignores a preceding statute, part of the same act, that says:  
 7 "Nothing in this part affects liability based on contract or the right to obtain relief  
 8 other than money or damages against a public entity or public employee." Govt Code  
 9 §814. Here, plaintiffs seek equitable relief only. Thus, the immunity does not apply to  
 10 bar the negligence claim.

11 **E. Plaintiffs' claims for violation of the California Constitution are**  
 12 **based on the affirmative acts of the City.**

13 Plaintiffs' tenth cause of action alleges the City has burdened their rights  
 14 guaranteed under California Constitution, Article I § 1 to enjoy and defend their life  
 15 and liberty; to acquire, possess, and protect their property; and to pursue and obtain  
 16 safety, happiness, and privacy. ECF no. 1 at ¶¶124-127. The City argues that this  
 17 "claim can only be premised on affirmative acts that the City has committed that  
 18 interfered with their rights to pursue and obtain safety, happiness, and privacy."  
 19 ECF no. 35 at pp. 17-18. Plaintiffs agree, and have made such allegations. Plaintiffs,  
 20 however, do acknowledge that this claim can only be pursued by the five individual  
 21 plaintiffs, and the three corporate plaintiffs should be dismissed from this claim.

22 **F. Response to the City's other immunity arguments.**

23 The City argues that emergency declarations, all of which expired last year or  
 24 before, *may* immunize it from tort liability.<sup>8</sup> These arguments ignore plaintiffs'  
 25 explicit statement that they do not seek to recover money damages from the City, but  
 26 instead limit their remedy to injunctive and equitable relief to redress the *current*

27 <sup>8</sup> A presumed typo in the City's brief says that one of the Mayor's proclamations about the  
 28 Tenderloin expires on June 30, 2024. That is incorrect. The proclamation expired on June 30,  
 2022. ECF no. 36 at Exhibit J.

1 *conditions* around their homes and businesses. ECF no. 1 at ¶7. Proclamations that  
 2 have been expired for a year or more provide no shield against any of plaintiffs' state  
 3 claims.

4 The City argues that it is generally immune from its failure to enact or enforce  
 5 laws. But as has been discussed at length already, plaintiffs allege much more than a  
 6 mere failure to enforce the law.

7 **G. Plaintiffs' claims do not implicate prosecutorial discretion and**  
 8 **the separation of powers doctrine does not automatically bar**  
**injunctive relief against a public entity.**

9 The City cites a case where a plaintiff asked the court to require a district  
 10 attorney to investigate and prosecute alleged violations of the law. *Gananian v.*  
 11 *Wagstaffe*, 199 Cal. App. 4th 1532 (2011). The court of appeal affirmed the trial  
 12 court's dismissal, noting that prosecutorial discretion is founded on the constitutional  
 13 principles of separation of power and due process. *Id.* at 1543.

14 In a jarring pivot, the City stretches that unremarkably holding beyond its  
 15 breaking point, to argue that plaintiffs' case is "premised on the City's inaction (that  
 16 is, failure to enforce laws) or the City's policy and fiscal choices.... Under the  
 17 separation of powers doctrine, this Court cannot compel the City to enforce any law  
 18 or enact any legislative or policy initiatives." ECF no. 35 at p. 25. But as has been  
 19 shown above, this is a gross mischaracterization of plaintiffs' allegations. Moreover,  
 20 this argument is also premature. If and when the time comes to consider the  
 21 imposition of specific forms of injunctive relief, this court can then consider the City's  
 22 any objections based on the separation of powers doctrine. As noted in the *Hood*  
 23 decision, this Court has the power to tailor the relief to both redress the harms to  
 24 plaintiff while also accommodating the public entity's legitimate concerns and  
 25 interests. 2023 WL 654187 at \*4.

26 **H. Plaintiffs seek injunctive relief based on emergency conditions,**  
 27 **and discovery should not be delayed.**

28 The City finally contends that "far ranging" discovery should be stayed as

1 Plaintiffs' allegations fall "well short of the necessary pleading standard". ECF no. 35  
2 at p. 25. Plaintiffs do not accept the premise that its pleadings are insufficient, as  
3 evidenced by this opposition. More importantly, they have no intention to engage in  
4 "far ranging" fishing expeditions, but rather seek targeted discovery geared toward  
5 efficient, economical and pointed eliciting of testimony and documents that will lead  
6 inexorably to, plaintiffs hope, an expeditious solution to the tragic conditions of their  
7 neighborhood.

8 Plaintiffs claims for emergency discovery are not hyperbolic. Even the City has  
9 sought emergency relief in the Tenderloin on three separate occasions in recent  
10 years. *See* ECF no. 36 at Exhibits F, G, and H.

11 Plaintiffs believe it is imperative that discovery begin immediately.

12 **V. CONCLUSION**

13 For the foregoing reasons, the City's motion should be denied and discovery  
14 should begin.

15 Dated: May 24, 2024

WALKUP, MELODIA, KELLY & SCHOENBERGER

16  
17 By:



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**PROOF OF SERVICE**

**Jane Roe, et al. v. City and County of San Francisco, et al.  
USDC-Northern California Case No. 4:24-cv-01562-JST**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the county where the mailing took place, My business address is 650 California Street, 26th Floor, City and County of San Francisco, CA 94108-2615.

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**PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

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26 **BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the  
27 document(s) with the Clerk of the Court by using the CM/ECF system. Participants  
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1 I declare under penalty of perjury under the laws of the United States of  
2 America that the foregoing is true and correct and that I am employed in the office of  
a member of the bar of this Court at whose direction the service was made.

3 Executed on May 24, 2024, at San Francisco, California.

4 

5  
6 Kirsten Benzien